

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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ORACLE FINANCIAL GROUP LLC, :

Plaintiff, : Case No.:

-against- : **COMPLAINT**

LEMBERG LAW LLC, :

Defendant. :
-----X

Plaintiff, Oracle Financial Group LLC (“Oracle”), by its attorneys, The Tarantino Law Firm, LLP, for its Complaint against Defendant Lemberg Law LLC (“Lemberg Law”), respectfully alleges as follows:

SUMMARY OF THE CASE

1. This is an action for civil remedies, including injunctive relief and damages, under the federal Lanham Act, and under New York State law, arising out of the malicious publication in this district of false, disparaging, and defamatory statements by Lemberg Law regarding Oracle and its business practices.
2. Lemberg Law is a law firm with its primary office in Wilton, Connecticut, and it operates the website www.lemberglaw.com (the “Lemberg Website”). The main practice area of Lemberg Law is consumer protection from unlawful debt collection practices.
3. Lemberg Law uses the Lemberg Website to advertise its services, and a primary method of advertisement is to list specific debt collection agencies, and expand upon the alleged unlawful practices a specific agency is engaged in, including complaints filed, telephone numbers used, names and addresses of company owners, and alleged customer complaints.

4. Lemberg Law receives direct financial interest from these statements, through the retention of consumers who have been contacted by a listed debt collection agency.

5. To engage and encourage the general public to retain Lemberg Law, the website disparages and defames debt collectors, specifically in the instant matter Oracle.

6. Such disparaging statements have damaged Oracle's reputation, and Oracle has sustained monetary damages and expenses in attempting to combat these disparaging statements.

7. Oracle brings the instant lawsuit to put an end to the smear campaign it has unjustifiably endured at the hands of Lemberg Law.

THE PARTIES

8. Plaintiff Oracle is duly formed New York State limited liability company. Oracle has its primary office in the Western District of New York.

9. Upon information and belief, Defendant Lemberg Law is a Connecticut limited liability company with a business address of 43 Danbury Road, Wilton, Connecticut 06897.

JURISDICTION AND VENUE

10. This action arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.* and the laws of the State of New York. This Court has subject matter jurisdiction, *inter alia*, pursuant to 28 U.S.C. § 1331, 1332, 1338, and 1367.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

FACTS

12. Oracle is a debt collection agency. Oracle provides services to companies that are seeking to collect unpaid accounts receivables.

13. Oracle operates the website www.oraclegroupllc.com.

14. Lemberg Law is a law firm with its primary office in Connecticut. One of Lemberg Law's primary practice areas is Consumer Protection lawsuits.

15. Lemberg Law operates the website www.lemberglaw.com.

16. Lemberg Law creates pages on the Lemberg Website which name and disparage debt collection agencies; one such agency is Oracle.

17. Since 20 __, the Lemberg Website has maintained a web page that sets forth several false, and defamatory statements about Oracle.

18. This website is located at <https://www.lemberglaw.com/oracle-financial-group-llc-collections-complaints-calls/> (the "Oracle Page"). A screenshot of this page is attached hereto as **Exhibit A.**

19. A Google search for "Oracle Financial Group" returns as the second result the hyperlink to the Oracle Page on the Lemberg Website. A screen shot of the Google Search results for "Oracle Financial Group" is attached hereto as **Exhibit B.**

20. While the complete text of the Oracle Page can be read at Exhibit A, the following statements are those that Oracle avers to be false and/or defaming (full quotes included for context, false and defaming portions indicated by *italics*):

- This lawsuit charges that *Oracle Financial Group violated the Fair Debt Collection Practices Act (FDCPA) by contacting third parties about a debt; by engaging in harassing behavior; by using false, deceptive, or misleading representation in connection with the collection of a debt; by threatening to take legal action without actually intending to do so; by misrepresenting that our client had committed a crime; and by using unfair and unconscionable means to collect a debt.*

- She alleges that *Oracle Financial Group told her friend that the debt collection agency was trying to reach our client with regard to “a criminal lawsuit.” In addition, our client says that her brother received a voicemail message from Oracle Financial Group saying that it was trying to serve her with a lawsuit. When she called Oracle Financial Group, our client says that the Oracle Financial Group debt collector told her that her license would be suspended if the debt wasn’t paid. The debt collection agency also said that it had sent our client a lawsuit in the mail.*
- As of April 2017, the Better Business Bureau reported 45 closed Oracle Financial Group complaints within the previous three years, including 9 closed Oracle Financial Group complaints within the previous 12 months. In addition, Justia lists one Oracle Financial Group complaints filed in federal court in the past year alleging violations of the Fair Debt Collection Practices Act. Furthermore, the Consumer Financial Protection Bureau (CFPB) lists 31 closed Oracle Financial Group complaints for 2016.
- Oracle Financial Group is based in Buffalo, New York. *The business was launched in 2000, and is both a debt collector and a debt buyer. Debt buyers typically purchase cheap blocks of debt that companies have written off as uncollectable. Sometimes debt buyers purchase debt from other debt buyers who have already worked over the accounts. They turn a profit by collecting on a percentage of those “uncollectable” debts.*
- Like many debt collection companies, Oracle Financial Group operates on a contingency basis, meaning that don’t get paid unless they collect debt. *They claim that their debt collectors are trained in persuasive techniques to get consumers to pay them,*

while at the same time claiming that their staff is trained to be in compliance with all federal and state laws that govern the industry.

FIRST CAUSE OF ACTION

(Violations of Lanham Act § 43(a))

21. Oracle repeats and incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

22. Defendant's publication of false and misleading statements about Oracle constitutes false advertising in violation of 15 U.S.C. § 1125(a)(1)(B).

23. Defendant's publication of false statements about Oracle is likely to deceive consumers as to the nature of Oracle's practices, including causing consumers to believe that Oracle engages in unlawful debt collection practices.

24. As a direct and proximate result of Defendant's unlawful acts, Oracle has suffered, and will continue to suffer significant monetary and reputational injury in amounts that will be proven at trial, but that are believed to exceed \$75,000, exclusive of interest and costs.

SECOND CAUSE OF ACTION

(Trade Libel/Commercial Disparagement)

25. Oracle repeats and incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

26. Defendant has maliciously published false statements that disparage Oracle, and its business practices.

27. These statements constitute injurious falsehoods and trade libel, which *inter alia*, impugn the integrity of Oracle. These statements were expressly directed at Oracle.

28. Defendant has published these false statements to the public by means of the Internet, and specifically, the Lemberg Website.

29. There can be no question that the readers of Defendant's statements understand Defendant's defamatory meaning, and understand that Defendant's statements are directed at Oracle and its business practices.

30. Oracle has been specifically harmed by Defendant's defamatory statements.

31. Defendant has no privilege to make its false and harmful statements.

32. As a direct and proximate result of Defendant's unlawful acts, Oracle has suffered, and will continue to suffer, significant monetary and reputational injury in amounts that will be proven at trial, but that are believed to exceed \$75,000, exclusive of interest and costs.

THIRD CAUSE OF ACTION

(Defamation)

33. Oracle repeats and incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

34. Defendant's published statements concerning Oracle and its business practices are false, and bring Oracle into disrepute or contempt and impeach its integrity and reputation. Specifically, Defendant asserts, *inter alia*, that Oracle has "violated the Fair Debt Collection Practices Act (FDCPA) by contacting third parties about a debt; by engaging in harassing behavior; by using false, deceptive, or misleading representation in connection with the collection of a debt; by threatening to take legal action without actually intending to do so; by misrepresenting that our client had committed a crime; and by using unfair and unconscionable means to collect a debt."

35. Defendant has published its false statements to the public by means of the Internet, specifically, the Lemberg Website.

36. Defendant is at fault because it maliciously made such statements.
37. Defendant has no privilege to make such statements.
38. Oracle has been, and continues to be damaged by these statements.
39. Oracle is a for-profit company, and Defendant's statements prejudice Oracle in the conduct of its business and/or deter others from dealing with it, and using its services.
40. As a direct and proximate result of Defendant's unlawful acts, Oracle has suffered, and will continue to suffer, significant monetary and reputational injury in amounts that will be proven at trial, but that are believed to exceed \$75,000, exclusive of interest and costs.

PRAYER FOR RELIEF

WHEREFORE, Oracle respectfully requests that this Court enter a judgment in its favor as follows:

- a. Declaring that Defendant's conduct violates 15 U.S.C. § 1125(a);
- b. Declaring that Defendant's conduct constitutes trade libel and/or commercial disparagement under the laws of the State of New York;
- c. Declaring that Defendant's conduct constitutes defamation of a corporation under the laws of the State of New York;
- d. Permanently enjoining Defendant from publishing the false advertising statements identified above in relation to Oracle;
- e. Permanently enjoining Defendant from publishing the statements constituting trade libel and/or commercial disparagement identified above in relation to Oracle;
- f. Permanently enjoining Defendant from publishing statements constituting defamation of a corporation identified above in relation to Oracle;

- g. Awarding Oracle damages in an amount proven at trial, and believed to be in excess of \$75,000, plus interest;
- h. Awarding Oracle its attorneys' fees and costs incurred in bringing this action; and
- i. Awarding such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Oracle demands a trial by jury of all issues so triable in this action.

Dated: Buffalo, New York
September 25, 2017

Respectfully Submitted,

THE TARANTINO LAW FIRM, LLP

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